

IN THE MATTER OF

AUTO SUPREME, INC.

Petitioner

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 07-033N
Request for Reconsideration

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ORDER RE: REQUEST FOR RECONSIDERATION OF
BOARD OF APPEALS CASE NO. 07-033N
DECISION AND ORDER

On March 21, 2008, the Petitioner submitted a Motion for Reconsideration of the Hearing Examiner Decision and Order in Board of Appeals Case No. 07-033N, issued on March 7, 2008. The Petitioner, through counsel, is requesting that I reconsider my denial of its retroactive request to enlarge the use through the addition of a 1,200-square foot sales facility, alleging a mistake of fact.

In BA 07-033N I confirmed the existence of a lawful nonconforming motor vehicle sales facility in a CE-CLI (Corridor Employment: Continuing Light Industrial) Zoning District. However, I denied the Petitioner's retroactive request to enlarge the use through the addition of a 24-foot by 50-foot modular office sales facility shown on the Nonconforming Use Plan because it represented more than a 175 percent enlargement of the nonconforming use.

Based upon the Petitioner's Motion for Reconsideration and the evidence of record, I have determined to deny the request for reconsideration.

Discussion

The Petitioner identified the sales facility in Section 5(c) of its petition as a structure. The petition also states the Petitioner seeks to enlarge the nonconforming use by installing a trailer for additional office space. At no time during the hearing did the Petitioner state the sales facility

was to be temporary. Instead, the evidence and testimony show the sales facility at issue is to remain on the site as long as the use continues.

The Petitioner claims as a mistake of fact, through the introduction of new evidence, that the sales facility is not a "structure" within the meaning of the Zoning Regulations because it does not require permanent location on the ground, or attachment to something having permanent location on the ground. Section 103.A.159. The Petitioner further asserts the sales facility is not a structure because it is preconstructed offsite. The Motion identifies the building as a "modular sales facility" or a "modular temporary trailer."

The Board of Appeals correctly considers modular office facilities to be "structures." In BA 05-012N&V, for example, the Hearing Authority confirmed as a nonconforming use a nearby motor vehicle repair facility located in a CE-CLI zoning district and specifically confirmed a modular office facility as part of that use.

Assuming arguendo that the sales facility at issue is a temporary trailer, the Zoning Regulations prohibit the Petitioner from using it as such. Section 128.D.1 (Bulk Regulations) authorizes the Department of Planning and Zoning to issue permits for the use of a "trailer or building as a *temporary field or sales office in connection with building development...*" The Zoning Regulations expressly states in this section that the "[u]se of a trailer for office or sales purposes shall be permitted only in accordance with this Section." (Emphasis Added.) As a temporary trailer for a motor vehicle sales operation, the modular sales trailer in this case does not meet this definition. It is therefore a prohibited facility and cannot be used in conjunction with the nonconforming use.

Conclusion

The sales facility is a "structure" within the meaning of the Zoning Regulations. Alternatively, if the sales facility is a temporary trailer, the Zoning Regulations expressly

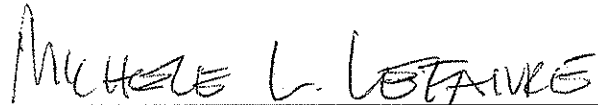
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prohibit the Petitioner from using it as part of its lawful nonconforming use.

Upon consideration of the Motion before the Hearing Examiner, and the Petitioner's evidence and testimony as to a mistake of fact, it is this **31st Day of March 2008** by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Motion for Reconsideration of BA Case No. 07-033N is **DENIED.**

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.